

#27 for refund

001

4/22/04



Ralph E. Jocke

Patent
&
Trademark Law**FACSIMILE TRANSMISSION COVER SHEET**

TRANSMITTING: 15 PAGES (INCLUDING THIS PAGE)

NAME: Patent and Trademark Office
Request for Refund

FAX NUMBER: 703-308-5077

DATE: March 23, 2004

SENDER: Ralph E. Jocke

FAX NUMBER: (330) 722-6446

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231 South Broadway, Medina, Ohio U.S.A. 44256-2601

Practitioner's Docket No. D-1108

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

☒ In re application of:

Serial No.: 09/288,685

Filed: 04/09/99

Title: Medical Cabinet with Adjustable Drawers

Group No.: 3653

Examiner: Jeffrey Shapiro

☐ Patent*:

Issued:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Refund Section, Accounting Division, Office of Finance

REQUEST FOR REFUND
(IMPROPER CHARGE OF DEPOSIT ACCOUNT)

I. REFUND REQUEST

This is a request for a refund, with respect to the charge to Deposit Account 10-1637, shown on the statement dated 05/30/03, for the above-identified

☒ application☐ patent

(check the following, if desired, and supply copy of statement)

☒ A copy of the monthly statement, in which the error referred to occurs, accompanies this request.

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. section 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☐ deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents and Trademarks, Washington, D.C. 20231.

FACSIMILE

☒ transmitted by facsimile to the Patent and Trademark Office.Date: 3/24/2004

Signature

Ralph E. Jocke

(type or print name of person certifying)

(Request for Refund (Improper Charge of Deposit Account)--page 1 of 3)

II. FEES CHARGED FOR WHICH REFUND REQUESTED**AMOUNT OF
REFUND
REQUESTED**

- ☐ Filing fee
☐ Surcharge for filing the basic filing fee on a date later
than the filing date of the application (37 CFR 1.16(e))

and/or

- ☐ Surcharge for filing the oath or declaration on a date
later than the filing date of the application
(37 CFR 1.16 (e))

- ☐ Extension of the term

- ☐ first month
☐ second month
☐ third month
☐ fourth month

- ☐ Excess claims

- ☐ Issue fee

- ☒ Petition fee

- ☐ Patent maintenance fee

- ☐ first maintenance fee
☐ second maintenance fee
☐ third maintenance fee

- ☐ Patent maintenance fee surcharge

- ☐ Other

\$1,300.00

\$1,300.00

TOTAL REFUND REQUESTED

III. EXPLANATION OF WHY CONTESTED CHARGE IS IN ERROR

The Decision on Petition dated 10/31/03 granted Applicant's petition to withdraw the holding of abandonment. That is, the Decision agreed that the application was never abandoned. Hence, the application never needed to be revived. It follows that the revival petition fee (37 C.F.R. § 1.17(m)) was charged (fee code 1453) when no fee was required. Thus, Applicant respectfully requests a refund of the improperly charged fee.

IV. MANNER OF REFUND

Please make refund by

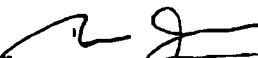
☒ crediting Account No. 10-0637

☐ refunding payment

Reg. No.: 31,029

Tel. No.: (330) 721-0000

Customer No.:


Signature of Practitioner

Ralph E. Jocke
(type or print name of practitioner)

Walker & Jocke

231 South Broadway
P.O. Address

Medina, OH 44256



UNITED STATES
PATENT AND
TRADEMARK OFFICE

MONTHLY STATEMENT OF DEPOSIT ACCOUNT

To replenish your deposit account, detach and return top portion with your check. Make check payable to Director of Patents & Trademarks.

WALKER & JOCKE
RALPH E. JOCKE
231 SOUTH BROADWAY

MEDINA OH 44256

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, DC 20231
www.uspto.gov

Account No.	100637
Date	5-30-03
Page	1

all accounts for FINA

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DATE POSTED			CONTROL NO.	DESCRIPTION (Serial, Patent, TM, Order)	DOCKET NO.	FEE CODE	CHARGES/ CREDITS	BALANCE	
MO.	DAY	YR.							
5	1	03	523	78244157	✓	7001	335.00	4669.02	
5	6	03	3	691141	✓	8504	30.00	4639.02	
5	6	03	19	E-REPLENISHMENT	✓	9203	-335.00	4974.02	
5	6	03	54	60467283	✓	2005	80.00	4894.02	
5	6	03	80	691247	✓	8514	200.00	4694.02	
5	13	03	1	09773366	✓	LC-1010	2402	160.00	
5	15	03	19	E-REPLENISHMENT	✓	9203	-335.00	5069.02	
5	16	03	7	09288685	✓	D-1108	1453	1300.00	
5	19	03	96	10438461	✓	ML-002	2001	375.00	
5	19	03	97	10438461	✓	ML-002	2202	153.00	
5	19	03	161	E-REPLENISHMENT	✓	9203	-528.00	3769.02	
5	19	03	168	E-REPLENISHMENT	✓	9203	-1300.00	5069.02	
5	21	03	881	76067948	✓	7004	150.00	4919.02	
AN AMOUNT SUFFICIENT TO COVER ALL SERVICES REQUESTED MUST ALWAYS BE ON DEPOSIT						OPENING BALANCE	TOTAL CHARGES	TOTAL CREDITS	CLOSING BALANCE
						5004.02	2783.00	2698.00	4919.02
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D-1108



UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Ralph E. Jocke
231 South Broadway
Medina, OH 44256

OFFICE OF THE DIRECTOR
TC 3600

In re Application of
David T. Frederick
SERIAL NO: 09/288,685
FILED: April 9, 1999

: DECISION ON PETITION
: TO WITHDRAW THE
: HOLDING OF ABANDONMENT

FOR: MEDICAL CABINET WITH ADJUSTABLE DRAWERS

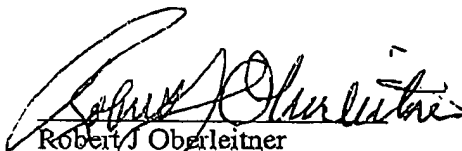
This is in response to applicant's petition filed in the Patent and Trademark Office on May 13, 2003 to Withdraw the Holding of Abandonment under 37 CFR 1.181. The delay in this decision is sincerely regretted.

The petition to Withdraw the Holding of Abandonment is **GRANTED**.

A review of the file indicates that on December 26, 2001, applicants filed an unsigned Appeal Brief in response to the examiners non-final rejection of July 17, 2001. On March 5, 2002 the examiner found the Brief defective because it was unsigned and concurrently set forth a new non-final rejection. Applicants on March 14, 2002 responded with a signed Brief that addressed the original rejection of July 17, 2001 but failed to address the new non-final rejection of March 5, 2002. On July 11, 2002 the examiner again found the Brief defective because it failed to address the current rejection of March 5, 2002. The rejection was concurrently made final on July 11, 2002. On August 28, 2002 applicant petitioned for Withdrawal of the Holding of Noncompliance. On March 21, 2003 the petition was denied.

The holding of abandonment in this application is hereby withdrawn and the rejections of March 5, 2002 and July 11, 2002 are hereby vacated.

The file is being forwarded to the examiner for an action on the merits


Robert J. Oberleitner
Director, Technology Center 3600
(703) 308-1134

dpw/snm: 10/20/03

May 13, 2003

Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Re: **Applicant: David T. Frederick**
Application Serial No.: 09/288,685
Filed: April 9, 1999
Title: Medical Cabinet With Adjustable Drawers
Notice of Abandonment Date: March 26, 2003
Confirmation No.: 7773
Docket No.: D-1108

Sir:

Please find enclosed a Petition for Revival pursuant to 37 C.F.R. 1.137(b); a Supplemental Appeal Brief; and a Petition to Review a Decision of a Technology Center Director for filing in the above-referenced Application.

Please charge the fee (\$1,300) associated with the Petition for Revival to Deposit Account 10-0637 of Walker & Jocke.

No other fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with this Response and any other fee due to Deposit Account 10-0637.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this _____ day of May 2003.

EV246920575US
Express Mail Label No.

Ralph E. Jocke

Practitioner's Docket No. D-1108

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
David T. Frederick)	
Serial No.:)	Confirmation No. 7773
09/288,685)	
Filed:)	Art Unit 3653
April 9, 1999)	
Title:)	Patent Examiner
Medical Cabinet With)	Jeffrey Shapiro
Adjustable Drawers)	

Mail Stop DAC
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER
37 C.F.R. 1.137(b)

1. This application became abandoned on October 12, 2002.
2. This application became abandoned because the failure to prosecute was an unintentional delay. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR § 1.137(b) was unintentional.
3. Response or action required is attached herewith.

Attached is a Supplemental Appeal Brief in response to the final rejection dated July 11, 2002.

4. Petition Fee (37 C.F.R. 1.17(m))

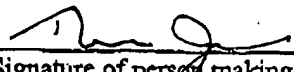
Application status is other than small entity - fee \$1,300.00.

5. Payment of fee:

Charge Deposit Account 10-0637 (Walker & Jocke) the sum of \$1,300.00.

A duplicate of this petition is attached.

Date: 5/12/2003



Signature of person making statement that
abandonment was due to an unintentional delay

Ralph E. Jocke
Name of person making statement

Medina, Ohio
Residence of person making statement

Date: 5/12/2003

Reg. No.: 31,029
Tel. No.: (330) 721-0000
Customer No. 07733


SIGNATURE OF PRACTITIONER
Ralph E. Jocke
WALKER & JOCKE
231 South Broadway
Medina, OH 44256
US

D-1108

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
David T. Frederick)	
Serial No.: 09/288,685)	Art Unit 3653
Confirm. No.: 7773)	
Filed: April 9, 1999)	Patent Examiner
Title: Medical Cabinet With)	Jeffrey A. Shapiro
Adjustable Drawers)	

Office of the Deputy Commissioner for Patent Examination Policy
Box DAC
Commissioner for Patents
Washington, D.C. 20231

Sir:

Petition To Review A Decision Of A Technology Center Director

Appellant respectfully requests that the ruling in the Decision dated March 21, 2003 be reviewed and reversed.

Overview of dates and papers associated with this application

1. 04/09/99 Initial filing
2. 08/17/00 Office Action (first) rejection
3. 11/10/00 Response by Appellant (successfully traversing the rejection)
4. 02/12/01 Office Action first restriction requirement
5. 03/01/01 Response by Appellant (successfully traversing the first restriction)
6. 05/22/01 Office Action second (different) restriction requirement
7. 06/04/01 Response by Appellant (successfully traversing the second restriction)
8. 07/17/01 Office Action (second non final) rejection
9. 10/17/01 Notice of Appeal
10. 12/17/01 Appeal Brief
11. 03/05/02 Notice of Noncompliant Appeal Brief (with one month reply period)
12. 03/14/02 Appeal Brief
13. 05/02/02 Petition for Withdrawal of Holding of Noncompliant Appeal Brief
14. 07/11/02 Notice of Noncompliant Appeal Brief (with one month reply period)
15. 08/28/02 Petition for Withdrawal of Holding of Noncompliant Appeal Brief
16. 03/21/03 Decision on Petitions

Appellant respectfully disagrees with the March 21, 2003 Decision on petitions for Withdrawal of Holding of Noncompliance with 37 C.F.R. § 1.192(c) ("Decision"). Appellant respectfully submits that the appeal to the Board of the decision of the Primary Examiner, mailed July 17, 2001 remains pending. The rejections in the Office Action dated July 17, 2001 are the

only legal rejections pending. Appellant's have submitted a signed Appeal Brief in response to the pending rejections. Prosecution has never been reopened.

There was no statement in the Office Action dated March 5, 2002 notifying Appellant that prosecution was reopened. Nor was the Office Action dated March 5, 2002 in compliance with the procedural rules of the Office (MPEP § 1208.02) for reopening prosecution. Furthermore, imposing requirements directly contrary to any reopening of prosecution, the Office Action dated March 5, 2002 required (in the Notice of Noncompliant Appeal Brief) Appellant to submit a signed copy of the Appeal Brief originally filed 12/17/01, and set a one month time period. The Notice of Noncompliant Appeal Brief is further evidence that prosecution was never reopened. If Appellant's Appeal Brief was not in effect (active), then why would the Office require a signed copy thereof? Appellant does not know the basis of the extraneous comments referencing non-pending rejections in the Office Action dated March 5, 2002. Perhaps the comments were miscopied therein from another application. However, the extraneous comments are not in effect (active). These extraneous comments in the Office Action dated March 5, 2002 are not the pending rejections in the record. The extraneous comments are also non responsive to Appellant's Appeal Brief. Furthermore, the Office cannot simultaneously require responses to both a Notification of Non-Compliance with 37 C.F.R. § 1.192(c) ("Notice") and extraneous comments not related to the appeal, and then hold the application abandoned for failing to respond to the extraneous comments.

The Office Action dated March 5, 2002 was defective. Appellant, in the Response dated March 14, 2002, called to the attention of the Office the defects. Appellant also stated (on page 2 of the Response) that the Action was defective. Thus, Appellant properly notified the Office of

the errors within one month, in compliance with MPEP § 710.06. The Office is required to restart the period for reply to run from the date the error is corrected. However, the errors in the Office Action dated March 5, 2002 still have not been corrected. Rather, additional errors by the Office have been committed.

The Decision states that "On March 5, 2002 the examiner found the Brief defective because it was unsigned and concurrently gave applicants a new non-final rejection." The Decision fails to mention that Appellant was required to submit another Appeal Brief. For example, the Office Action dated March 5, 2002 states (on page 2) that "A ratification properly signed is required" and "To avoid dismissal of the appeal, appellant must ratify the appeal brief." The Office Action further set a time period of one month for Appellant to resubmit the Appeal Brief. That is, Appellant was not afforded any other response option (for example there was no basis to file a reply under 37 C.F.R. § 1.111 or request reinstatement of the appeal (MPEP § 1208.02)). Appellant had to ratify the previously submitted Appeal Brief, otherwise the application would be held abandoned. Applicant did so. Again, prosecution was never reopened, which the Decision also fails to mention. The Decision further fails to mention that the rejections addressed in the Appeal Brief were the actual pending rejections of record, not the allegedly new non-final rejections.

Because of the requirement to Appellant to resubmit the Appeal Brief (i.e., respond to the appealed rejections), the allegedly new non-final rejections are merely extraneous comments. That is, because of the requirement imposed on Appellant to resubmit the Appeal Brief in response to the appealed rejections, prosecution could not have been reopened. The imposed Appeal Brief requirement (and the appealed rejections pertaining thereto) would first have to be

vacated before prosecution could be reopened. Such was not the action of the Office. The Office's requirement for Appellant to resubmit the Appeal Brief is *prima facie* evidence that prosecution was never reopened. Since prosecution was never reopened, the alleged new non-final rejections were never pending. The appealed rejections were pending, and take precedence.

The Office cannot legally require an Appeal Brief in response to an appealed set of rejections on one hand, and also simultaneously reopen prosecution with a different set of rejections on the other hand. The Office cannot mail a Notification of Non-Compliance with 37 C.F.R. § 1.192(c) requiring an Appellant to resubmit an Appeal Brief in response to an appealed set of rejections, wherein the Notification has inserted therein extraneous comments without reopening prosecution, and then hold the application abandoned due to the extraneous comments.

Prosecution has never been reopened. Appellant's Appeal Brief filed March 14, 2002 is in compliance with 37 C.F.R. § 1.192(c) and remains pending. All of the Office Actions subsequent to the Appeal Brief (filed March 14, 2002) are non responsive to the properly pending Appeal Brief.

Appellant respectfully submits that the ruling in the Decision is in error because it was incorrectly based on rejections (i.e., the alleged new non-final rejections) that were not legally pending. Appellant respectfully requests that the ruling be reversed. Furthermore, it is improper to hold an application abandoned based on alleged rejections which are neither pending nor of record. Such is the present situation. Thus, Appellant also respectfully requests a withdrawal of the holding of abandonment. Appellant further requests that either (1) the application be remanded to the Director for a decision on the petition filed August 28, 2002 regarding the issue of appeal brief size limit (whereof the Office has previously granted petitions on the issue), or (2)

the Office Action dated May 2, 2002 be treated as an Examiner's Answer in response to the active and pending Appeal Brief filed March 14, 2002.

Request for Refund

As previously discussed, Appellant respectfully submits that the application is not abandoned. Nevertheless, an Appellant, due to compliance with time requirements, is not permitted a delay in filing a petition under 37 C.F.R. § 1.137 (MPEP 711.03(c)). Thus, Appellant was required to file a revival petition under 37 C.F.R. § 1.137(b) and pay the corresponding petition fee (37 C.F.R. § 1.17(m)). Appellant respectfully submits that with the grant of the petition presented herein, the revival petition fee would have been paid when no fee was required. Therefore, upon grant of the petition to Review a Decision of a Technology Center Director presented herein, Appellant requests a refund of the paid revival petition fee (37 C.F.R. § 1.17(m)) and any other unnecessary paid fee.

Conclusion

Appellant's petition should be granted for the reasons presented herein. The undersigned will be happy to discuss any aspect of the application by telephone at the Office's convenience.

Respectfully submitted,

Ralph E. Jocke Reg. No 31,029
WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000